

REMARKS

Reconsideration of this application, in view of the foregoing amendment and the following remarks, is respectfully requested.

Claims 1-19 were originally presented for consideration in this application. Claims 1 and 13 have been canceled. Accordingly, claims 2-12 and 14-19 are currently pending in this application.

The following rejections were set forth in the Office Action:

1. Claims 1, 13 and 16-19 stand rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 4,203,617 to Bowman, Jr. (Bowman);
2. Claims 1, 13 and 14 stand rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,741,027 to Stroh et al. (Stroh); and
3. Claims 1-19 stand rejected under 35 USC §103 as being unpatentable over Published U.S. Application No. 2004/0145144 of De Freitas, Jr. et al. (DeFreitas) in view of Stroh.

Regarding the anticipation rejections based on the Bowman reference, please note that claims 1 and 13 have been canceled above and, thus, the rejections of these claims are moot. Claims 14 and 16 have been rewritten in independent form above. These claims recite that an axle beam is made of a composite material.

In paragraph 3 of the Office Action, the examiner refers to column 2, lines 39-44 of the Bowman reference and states that Bowman describes an axle beam made of composite material. This is incorrect. Instead, this passage in the Bowman reference describes the axle 10 as, "basically consisting of a formed elongate composite body

including a stamped sheet front member 12 and a cooperating stamped sheet metal rear member 14.”

Thus, the Bowman axle 10 has a “composite” body in the sense that it is made up of multiple sheet metal members 12, 14. This is entirely different from the composite material recited in claim 16 and defined in the specification as, “a material consisting of two or more constituents, insoluble in one another, which are combined to form the material possessing certain properties not possessed by the individual constituents.”

Therefore, the Bowman reference does not describe the elements and limitations recited in claims 14 and 16. For this reason, the examiner is respectfully requested to withdraw the anticipation rejections of claims 14 and 16 based on the Bowman reference.

Regarding the anticipation rejections based on the Stroh reference, please note that claims 1 and 13 have been canceled above, thereby making the rejections of these claims moot. In addition, claim 14 has been rewritten in independent form and further amended above to recite that the reinforcement spans a hollow interior of the axle beam. This feature of the invention is shown in FIG. 5 of the drawings.

In contrast, Stroh describes the web 70 as extending between upper and lower flanges 66, 68 of an I-beam shaped axle body. Therefore, the Stroh reference does not describe the elements and limitations recited in claim 14. For this reason, the examiner is respectfully requested to withdraw the rejection of claim 14 based on the Stroh reference.

Regarding the obviousness rejections based on the combination of the DeFreitas and Stroh references, these rejections are respectfully traversed. While it is true that the DeFreitas reference describes a steerable axle with accompanying king pin bore, etc., and the Stroh reference describes that a composite material may be used in an axle body, a *prima facie* case of obviousness has not been made out.

As stated in MPEP §2143.01, “The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggest the desirability of the combination.” In the present situation, the DeFreitas reference describes a modular axle assembly wherein an axle body is connected to steering knuckles at each end using flanged connections. In this manner, the axle body and the steering knuckles are readily interchangeable, so that the axle track and drop height can be changed.

In contrast, the Stroh reference describes a one-piece axle which is constructed for minimum weight while having adequate strength for its application. As stated in the Stroh reference, “Note that it is contemplated that the transitions between the various cross-sections involved herein will be smooth transitions, thereby avoiding discontinuities which lead to fatigue failure.” The DeFreitas reference specifically utilizes multiple discontinuities (the flanges connecting the axle body and the steering knuckles) to achieve its interchangeability feature. A person skilled in the art would certainly not find it obvious to combine these references.

As further stated in MPEP §2143.01, although modifications of the prior art to meet the claimed invention would have been within the ordinary skill of the art, “because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references.”

“The tendency to resort to ‘hindsight’ based upon applicant’s disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.”

“The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure.”

In the present case, there is no teaching or suggestion in either of the references to make the combination proposed by the examiner. Therefore, for this additional

reason, the examiner is respectfully requested to withdraw the obviousness rejections of the pending claims.

In view of the foregoing amendment and remarks, all of the claims pending in this application are now seen to be in a condition for allowance. A Notice of Allowance of claims 2-12 and 14-19 is therefore earnestly solicited.

The examiner is hereby requested to telephone the undersigned attorney of record at (972) 516-0030 if such would expedite the prosecution of the application.

Respectfully submitted,

KONNEKER & SMITH, P.C.



Marlin R. Smith
Attorney for Applicants
Registration No. 38,310

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660 North Central Expressway
Suite 230
Plano, Texas 75074
(972) 516-0030

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on MAY 19, 2005
